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C O N F I D E N T I A L SECTION 01 OF 04 MANILA 000610

SIPDIS

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TAGS: [PREL](#) [MARR](#) [KCRM](#) [CASC](#) [RP](#)  
SUBJECT: LCPL SMITH ACCUSER BOWS OUT OF CASE

REF: MANILA 326 AND PREVIOUS

Classified By: Ambassador Kristie A. Kenney for reasons  
1.4 (b) and (d).

¶1. (C) SUMMARY. The Philippine woman who accused U.S. Marine LCpl Daniel J. Smith of rape in November 2005 has settled the civil judgment against Smith and filed a sworn statement March 17 with the Court of Appeals raising serious questions about the events on the night of the alleged rape. The news that Suzette Nicolas, or "Nicole" as she has been known in the press until now, had filed the statement comes on the heels of earlier reports that she had fired her long-time attorney, and had left the Philippines. The story has garnered front page news and speculation is rampant about what might have influenced Smith's accuser to abandon her aggressive efforts to prosecute Smith. While Philippine government officials have reacted positively, opposition politicians are denouncing the Arroyo government, the U.S., and the Visiting Forces Agreement, which provides the legal framework for U.S. military personnel in the Philippines. Though it is yet early to assess the impact of Nicole's sworn statement, it could prove to be useful in achieving a favorable Court of Appeals ruling or, ultimately, a Philippine government decision to remove LCpl Smith from the Philippines. Embassy press guidance is contained in para.

¶11. END SUMMARY.

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BACKGROUND  
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¶2. (C) U.S. Marine Lance Corporal Daniel J. Smith was convicted by a Philippine trial court in December 2006 of raping a Filipino woman at Subic Bay in November 2005 and was sentenced to a maximum of 40 years in prison. Smith immediately filed an appeal of the conviction and his case is pending before the Court of Appeals. Except for a brief three-week period following his conviction, during which Smith was held in a Philippine jail, Smith has been in U.S. custody on Chancery grounds since his arrest in November ¶2005.

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NICOLE SETTLES CIVIL JUDGMENT . . .  
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¶3. (C) The case against LCpl Smith took an unusual turn March 17 when "Nicole" fired her long-time attorney, a prominent left-wing activist, and settled with Smith the P100,000 (USD 2,000) civil judgment that a trial court ordered Smith to pay in damages upon his conviction in December 2006. As part of the settlement agreement, which is now a public document, Nicole states she has "released, remised and forever discharged Smith . . . from any and all claims, demands or causes of action arising from the indemnity and compensatory damages awarded" by the trial court. The settlement, signed

March 12 but filed with the Court of Appeals March 17, further states that the payment was "strictly voluntary on the part of Daniel J. Smith and shall not in any way be construed as admission of liability, of whatever nature," on the part of Smith. Given that Nicole's sole interest in the case pending in the Court of Appeals was premised on the civil judgment, her settlement with Smith effectively removes her as a party to the litigation.

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. . . AND "CLARIFIES" HER TESTIMONY  
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¶4. (C) In connection with the release of civil liability, Nicole filed with the Court of Appeals a notarized sworn statement seeking to "clarify certain aspects of (her) testimony" given during the trial. Despite the media's characterization of the statement as a "recantation," the statement can be better characterized as a set of questions from Nicole to the Court of Appeals that raise serious doubts about what actually took place the night of the alleged crime. In the statement, Nicole recalls how she "practically grew up interacting with American servicemen" who treated her and her family very well, and states that she "can't help but entertain doubts on whether the sequence of events in Subic last November of 2005 really occurred the way the court found them to have happened." She concludes that she would rather "risk public outrage than do nothing to help the court in ensuring that justice is served."

¶5. (C) Meanwhile, Nicole's former attorney told the press that, in terminating her services, Nicole's mother said

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Nicole had left the country for the United States. For her part, Nicole's mother told reporters that Nicole had decided to leave her painful past behind and start afresh. "She decided that it's time to move on," Nicole's mother told the press, adding that it had been a "difficult" three years and the family was "exhausted." "We are no longer interested" in the case, and "we leave Smith to God." Nicole's mother also stated that Nicole looked "happy" as she left for "another country." The Public Affairs Section has fielded numerous queries on the issue and, as is standard procedure with visa questions on a particular case, has refused to comment for privacy reasons.

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GOVERNMENT REACTS POSITIVELY  
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¶6. (SBU) For its part, Malacanang quickly urged the public to respect Nicole's personal decision no longer to pursue the case. Palace officials stressed that the Court of Appeals will nonetheless continue to review the criminal case and may or may not consider Nicole's sworn statement. Asked by media about the next possible step the defense can take, Justice Secretary Raul Gonzalez said they can "ask the Court of Appeals to declare a mistrial and the fiscal can move for a dismissal of the case on the ground that evidence is not strong." An official of the Department of Foreign Affairs who requested anonymity also said it is possible that the case "could be dismissed due to lack of witnesses."

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OPPOSITION REACTION PREDICTABLE  
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¶7. (SBU) Predictably, opposition lawmakers generally saw Nicole's decision to settle her case as a setback for the movement against the Visiting Forces Agreement. Opposition Senator Francis Pangilinan, for example, said the news was "terribly disheartening," and was quick to blame the government and the justice system for its failure to protect ordinary citizens like Nicole. Party-list Representatives Risa Hontiveros-Baraquel and Liza Masa speculated that the

U.S. had exerted pressure on the government and her family and offered a deal that was too good to refuse. Senate minority leader Aquilino Pimentel was apprehensive that current calls in the Senate to abrogate the U.S.-RP Visiting Forces Agreement would lose public appeal without the case. These views were shared by leftist organizations BAYAN (Bagong Alyansang Makabayan or New Patriotic Alliance) and the National Union of People's Lawyers, vocal critics of the Visiting Forces Agreement.

18. (SBU) However, there were some moderate editorials that recognized Nicole's prerogative to settle her case, after coping with three difficult years under intense media scrutiny. They were sympathetic to Nicole's family plea for understanding and desire to live their lives in peace. Other observers saw Nicole's sworn statement as a recantation and wondered whether Smith's continued detention is tenable.

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SECURITY PREPARATIONS  
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19. (C) Given the intense press and public attention the Smith case has engendered, Mission requested that the Philippine National Police increase its presence around the Embassy in case of demonstrations. Post is prepared for possible demonstrations at or near the U.S. Embassy with related media coverage.

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COMMENT  
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110. (C) Nicole's actions in definitively cutting her ties to the case and settling the civil damages with LCpl Smith, along with her sworn statement raising serious doubts about the events that took place the night of the alleged rape, give the Philippine government important tools it can use to push the Court of Appeals to come to a rapid resolution on the Smith case. In the event the Court of Appeals issues an adverse decision, Nicole's sworn statement could ultimately prove useful in achieving a Philippine government decision to remove LCpl Smith from the Philippines. We will continue working vigorously at the highest levels to ensure that senior Philippine government officials understand the import of Nicole's actions and move swiftly to resolve one of the thorniest issues in our bilateral relationship. Post will

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follow up in coming days with recommendations on how a broader USG effort can contribute to this goal.

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PRESS GUIDANCE  
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111. (SBU) In response to numerous media queries, the Embassy has prepared the following guidance:

U.S. Embassy Manila, March 18, 2009

Latest Developments on LCpl Smith Case

Q: Is it true the "Nicole" is in the United States?

-- We have seen the media reports, but have no further information on her whereabouts.

Q: Did the U.S. cut a deal with her and send her to the U.S./give her a U.S. visa?

-- I would refer you to the legal authorities for status of the case.

-- U.S. visas are adjudicated in strict accordance with U.S. laws and regulations.

Q: But, didn't the U.S. facilitate her travel to the U.S.?

-- Thousands of people seek consular services each day at the U.S. Embassy in Manila. For privacy reasons, we do not comment on who seeks services or what services they sought.

Q: How will "Nicole's" recanting affect the pending negotiations between the U.S. and Philippine governments re LCpl Smith's custody?

-- I would refer you to the legal authorities for questions regarding the status of the case.

Q: What is the status of his custody?

-- LCpl Smith remains in confinement at the main U.S. Embassy compound in accordance with the VFA.

Q: What is the status of LCpl Smith's appeal of his guilty verdict?

-- I would refer you to his lawyers for information on the legal proceedings of his case.

Q: The recent Philippine Supreme Court decision called the confinement of LCpl Smith on the grounds of the U.S. Embassy "unconstitutional." The decision called for the U.S. and Philippine governments to negotiate a new place of confinement. What is the status of this negotiation?

-- The U.S. Embassy has taken note of the Supreme Court decision regarding the Visiting Forces Agreement (VFA). As it concerns important legal issues, we have referred it to United States Government legal experts in Washington.

-- Although the Supreme Court decision is under reconsideration and therefore not yet final, U.S. officials have begun a dialogue on this issue with officials from the Philippine Embassy in Washington.

-- We have no further updates at this time.

Q: What is the status of the VFA?

-- The VFA provides the sole legal framework for U.S. Philippine cooperation on legal issues involving U.S. military personnel in the Philippines. As such, it is important for our bilateral military relationship.

Background: The plaintiff, known as "Nicole" and identified as Suzette Nicolas in court documents, terminated the services of her lawyer, Evelyn Ursua, in the Philippines on March 16, 2009, in relation to the case involving her alleged rape by U.S. Marine LCpl Daniel Smith. She settled with Smith the P100,000 civil judgment that a trial court ordered Smith to pay in damages and on March 17 filed a sworn affidavit with the Court of Appeals raising questions about the events on the night of the alleged rape in November 2005.

Media reports quote her former lawyer as saying that Nicole has left the country. Smith's appeal of his conviction has

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been pending in the Court of Appeals since October 2007.  
KENNEY